

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)

Rules and Regulations Implementing the)
Telephone Consumer Protection Act of 1991)

CG Docket No. 02-278

Petition For Declaratory Ruling Of)
The Fax Bax Coalition)

TO: The Commission

ACA INTERNATIONAL'S COMMENT IN
SUPPORT OF PETITION FOR DECLARATORY
RULING OF THE FAX BAN COALITION

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ACA International (“ACA”) files this comment in support of the Petition for a Declaratory Ruling filed by the Fax Ban Coalition (“Coalition”) on November 7, 2005. The Petition seeks a ruling from the Commission that affirms the Commission’s exclusive authority to regulate interstate communications in the form of interstate commercial fax messages. The Coalition also seeks a ruling that State laws purporting to regulate interstate facsimile transmissions are preempted by the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”).

ACA believes that the relief requested by the Coalition is in the public interest and consistent with federal law requirements. Relief should be granted by the Commission in order to address illegitimate State-based attempts to undermine the intent of Congress reflected in the Junk Fax Prevention Act of 1995, Pub. L. No. 109-21, 119 Stat. 359 (2005) (“Junk Fax Act”) and the Telephone Consumer Protection Act (“TCPA”). Without action by the Commission, the trend of increasing State-based legislation which modifies or otherwise varies the fax provisions of the Junk Fax Act and the TCPA will result in an unworkable web of complex State laws purporting to regulate intrastate fax communications, but which directly impact interstate faxes and invade the federal sphere. For these reasons, as discussed below, ACA supports the relief requested by the Coalition.

I. Statement on ACA

ACA International is an international trade organization of credit and collection

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companies that provide a wide variety of accounts receivable management services. Headquartered in Minneapolis, Minnesota, ACA represents approximately 5,800 company members ranging from credit grantors, collection agencies, attorneys, and vendor affiliates.

The company-members of ACA comply with applicable federal and state laws and regulations regarding debt collection, as well as ethical standards and guidelines established by ACA. Specifically, the collection activity of ACA members is regulated primarily by the Federal Trade Commission under the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq.*, the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (as amended by the Fair and Accurate Credit Transactions Act); the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; in addition to numerous other federal and state laws. Indeed, the accounts receivable management industry is unique if only because it is one of the few industries in which Congress enacted a specific statute governing all manner of communications with consumers when recovering payments.¹ In so doing, Congress committed the regulation of the recovery of debts to the jurisdiction of the Federal Trade Commission. 15 U.S.C. § 1692l.

ACA members range in size from small businesses with several employees to large, publicly held corporations. Together, ACA members employ in excess of 100,000 workers.

¹ The FDCPA defines “communications” subject to statute broadly to include “the conveying of information regarding a debt directly or indirectly to any person through any medium.” 15 U.S.C. §1692a(2).

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These members include the very smallest of businesses that operate within a limited geographic range of a single state, and the very largest of multinational corporations that operate in every state. The majority of ACA members, however, are small businesses. Approximately 2,000 of the company members maintain fewer than 10 employees, and more than 2,500 of the members employ fewer than 20 persons. Many of the companies are wholly or partially owned or operated by minorities or women.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. They represent the local hardware store, the retailer down the street, and your family doctor. ACA members work with these businesses, large and small, to obtain payment for the goods and services received by consumers. In years past, the combined effort of ACA members have resulted in the recovery of billions of dollars annually that are returned to business and reinvested. For example, ACA members recovered and returned over \$30 billion in 1999 alone, a massive infusion of money into the national economy. Without an effective collection process, the economic viability of these businesses, and by extension, the American economy in general, is threatened. At the very least, Americans are forced to pay higher prices to compensate for uncollected debt.

ACA members rely on faxes to communicate with consumers and clients as a critical link in the process of recovering outstanding payments. ACA itself regularly uses faxes to communicate with its membership. As a result, the Association and its members are impacted

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by the often inconsistent State fax statutes which impose burdens in excess of those mandated by Congress.

II. ACA Supports the Fax Ban Coalition's Petition.

ACA strongly endorses the Petition's goals of (1) confirming the exclusive authority of the FCC to regulate interstate faxes, and (2) preempting Section 17538.43 of the California Business and Professions Code, and all similar State laws, that purport to regulate the transmission of interstate faxes. Following the enactment of the TCPA in 1991 and the Junk Fax Act in 2005, nearly three dozen states have enacted legislation which directly, or indirectly, seek to regulate the communication of interstate faxes. California's recent passage of Section 17538.43 is simply the latest in a conflicting patchwork of unconstitutional State laws that intend to wrest away from the Commission its exclusive jurisdiction to regulate interstate communications. Indeed, the California law directly attacks the Congressional mandate in the Junk Fax Act to apply the "established business relationship" exemption to unsolicited faxes.

The Commission needs to act swiftly and decisively to preserve its exclusive jurisdiction over interstate communications. The federal law justifications for the Commission's action are well documented in the Petition and numerous other filings in this proceeding. In the interest of avoiding redundancies, ACA adopts these arguments by reference. Instead, ACA simply notes that the conflicting federal and state regulatory scheme

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that now governs interstate fax transmissions is patently at odds with the clear objective of Congress to create uniform standards to regulate these transmissions. The variances in the federal and States' laws risk infringing consumers' privacy and legitimate business endeavors because of the complexities of complying with the divergent laws. The Petition affords the Commission the opportunity to restore the uniformity that Congress envisioned.

If you have any questions, please contact Andrew M. Beato at (202) 737-7777 or abeato@steinmitchell.com.

Respectfully submitted,

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